

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of March 1st, 2013 wherein the ministry denied the appellant a Person with Persistent Multiple Barriers (PPMB) designation because the ministry determined the appellant did not meet all the requirements in section 2(1) Employment and Assistance Regulation (EAR) which requires a person to meet the requirements stated in section 2(2) EAR and section 2(3) or section 2(4) EAR. The ministry determined the appellant met the requirements of section 2(2) and section 2(4)(a) EAR but did not meet the requirements of section 2(4)(b) EAR; specifically that the appellant, in the opinion of the minister, does not have a medical condition that is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Act Regulations (EAR), section 2
Employment and Assistance Act Regulations (EAR), Schedule E

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Medical Report – PPMB application signed by a medical practitioner (MP) on September 10th, 2012.
- Employability Screen indicating the appellant's score of 11.
- Letter dated January 9th, 2013 from the ministry to the appellant advising her application for PPMB has been denied because she did not meet the criteria set out in section 2(4)(b) EAR.
- Fax dated February 19th, 2013 to the appellant's MP requesting clarification of the appellant's barriers (restrictions) in searching for and/or accepting employment.
- Request for Reconsideration signed by appellant on February 2nd, 2013.

On September 10th, 2012 the appellant's MP signed the appellant's application for PPMD designation. The MP diagnosed the appellant's primary condition as depression and chronic anxiety, with a secondary condition of social phobia, and prescribed a daily dosage of 20 mg Prozac medication. The MP stated the appellant's medical condition, which is episodic in nature and flares, is expected to exist for more than two years. The minister is satisfied that the information from the MP confirms that the appellant has a medical condition that has lasted at least one year and is expected to last at least another 2 years. The MP stated the appellant is not able to work or seek out employment due to marked anxiety, depression. The ministry on several occasions requested further information from the MP to explain the concerning frequency and duration of the appellant's medical condition and the effects of the medication regime to clarify her restriction to employment; however, no reply was received. An Employability Screen completed on the appellant provided a score of 11, which indicates the appellant is considered to be immediately employable or employable with short – term interventions.

The ministry did not attend the hearing and, being satisfied the ministry was notified of the date and time, the hearing proceeded under section 86(b) EAR.

The appellant called one witness who also acted as her advocate. The witness testified that she had worked with the ministry for several years and during that time worked with the appellant for over 6 years; that she has worked in the mental health field and is presently employed on a contract basis as a program facilitator providing training for disability consultants. The witness testified that when the appellant was part of her caseload, the appellant suffered from severe depression and chronic social phobia. The witness testified that many times she would have to schedule or re-schedule the appellant's appointments to make sure the number of people the appellant would come into contact with was limited, due to the appellant's high anxiety levels. The witness testified that part of her training was to "do no harm" when applying programs to clients and in her opinion, the appellant is being harmed by having to seek employment and that, in her opinion, the ministry doesn't understand the severity of the appellant's medical condition. The witness testified that she holds a Community Social Worker Certificate and has received disorder training.

The panel finds the witness testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The appellant testified that the ministry does not understand what she goes through on a daily basis and that her son now lives with her to assist her. The appellant testified that she feels pressured into looking for work and that she needs to deal with her illness first. The appellant testified that she had addiction issues at one time but has been clean for several years. The appellant testified that she was also fully employed at one time but now because of her health issues, she is not able to look for work; that at times she is unable to get out of bed for days; and that she sometime forgets to eat or buy food. The appellant that family members now live with her to provide assistance to her.

The panel finds the appellant's testimony does contain information that is in support of the information and

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record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry denied the appellant a PPMB designation because, in the opinion of the ministry, the appellant does not have a medical condition that is a barrier that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The legislation considered: EAR

Section 2

- (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in
- (a) subsection (2), and
 - (b) subsection (3) or (4).
- (2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:
- (a) income assistance or hardship assistance under the Act,
 - (b) income assistance, hardship assistance or a youth allowance under a former Act,
 - (c) a disability allowance under the *Disability Benefits Program Act*, or
 - (d) disability assistance or hardship assistance under the *Employment and Assistance for Persons with Disabilities Act*.
- (4) The person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
- a) in the opinion of the medical practitioner,
 - (i) has continued for at least 1 year and is likely to continue for at least 2 more years, or
 - (ii) has occurred frequently in the past year and is likely to continue for at least 2 more years, and
 - b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment. (B.C. Reg 263/2002)

In the reconsideration decision the ministry argued that in the PPMB application the MP checked the box to indicate the appellant's medical condition was episodic in nature, commenting "has flares"; and the restriction specific to her medical condition is "not able to work or seek out work due to marked anxiety, depression". The ministry argued further information was needed from the MP regarding the effects of the medication regime, specific restrictions to employment, and the frequency and duration of the severe exacerbations of anxiety and depression which precluded the appellant from searching for, accepting or continuing employment as set in section 2(4)(b) EAR. The ministry argued several attempts to contact the MP by phone failed and a fax number was not available that could expedite the request.

The appellant argued that she does meet the legislated criteria to be designated as PPMB, and that she does have medical conditions which have been identified by her MP that preclude her from searching for, and accepting employment. The appellant argued the ministry did not speak to her directly nor does the ministry understand her medical condition and the impact that her anxiety issues have on her ability to seek out employment. The appellant argued that before her addiction issues she had a full-time job and she wants to work again but needs to get healthy first. The appellant argued the MP didn't fully understand what to put on the form, which would explain his short comments.

The panel finds that the ministry did attempt to make contact with the MP to clarify his comments on the PPMB application form. The panel finds the PPMB legislation requires the opinion of the MP to confirm the medical condition and provide information outlining why the condition is a barrier that precludes the applicant from

seeking or continuing employment. The panel finds that, without the clarification from the MP to meet the ministry's request, that there is not sufficient evidence to establish that the appellant has a medical condition that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The panel finds the ministry reasonably determined that the appellant failed to meet the criteria in section 2(4)(b) EAR and therefore the ministry decision that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment was reasonable.

The panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.